

DIVISION IV

CACR06-1137

JIMMY DOUGLAS JEFFERSON

May 30, 2007

APPELLANT

V.

APPEAL FROM THE MISSISSIPPI  
COUNTY CIRCUIT COURT  
[NO. CR2002-143]

STATE OF ARKANSAS

HON. VICTOR LAMONT HILL  
CIRCUIT JUDGE

APPELLEE

AFFIRMED

In an unpublished opinion handed down on February 9, 2005, we reversed and remanded for a new trial Jimmy Douglas Jefferson's rape conviction. In that case, we held that the trial court erroneously admitted hearsay in the form of a divorce complaint. Jefferson was retried and convicted of rape and residential burglary for which he was given consecutive sentences of 120 and 60 months in the Arkansas Department of Correction. On appeal, he argues that the trial court erred in admitting "irrelevant" testimony concerning pry marks found on the door to the victim's residence, because the marks were not "tied" to him. Jefferson also asserts that the error in admitting the testimony was not harmless. We affirm.

Jefferson was charged with unlawfully entering a mobile home occupied by the victim, Starsha Flie, and raping her. Jefferson moved in limine to exclude Bryan Crites's testimony that he discovered pry marks on the back door of the victim's residence where the police had

also discovered Jefferson's fingerprints. The detective conceded that he could not determine when the marks were made, or whether Jefferson made the marks. Jefferson argued, as he does on appeal, that testimony concerning the pry marks was not relevant because the detective could not conclusively say that Jefferson made them. The trial court denied the motion.

Arkansas Rule of Evidence 401 states that "'relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Our rules of evidence state that "all relevant evidence is admissible, except as otherwise provided by statute or by these rules or by other rules applicable in the courts of this State. Evidence which is not relevant is not admissible." Ark. R. Evid. 402. A ruling on the relevancy of evidence is discretionary, and we will not reverse absent an abuse of discretion. *Cobb v. State*, 340 Ark. 240, 12 S.W.3d 195 (2000).

We hold that the trial court did not err in finding relevant Detective Crites's testimony concerning the presence of pry marks on the door of the victim's home. Jefferson's defense at trial was that he had consensual sex with the victim, and therefore, evidence of forced entry into the victim's home would certainly be probative of whether the victim consented. Contrary to Jefferson's assertions, the fact that Detective Crites could not conclusively state that it was Jefferson who made the pry marks does not render the evidence irrelevant, per se.

Contrary to Jefferson's assertions, there is evidence, albeit circumstantial, that tends to tie him to the pry marks. Detective Crites testified that Jefferson's fingerprint was found on

the door knob of the door where the pry marks were discovered. The fingerprints are direct evidence that places Jefferson near to where the pry marks were discovered, at the back door of the victim's trailer. We note further that Detective Crites also stated that when the police arrived at Flie's residence, they had to switch on the circuit breaker to restore power, which suggests that someone may have been trying to mask their entry into the victim's residence. This conclusion was substantiated by the owner and landlord, Kenny Travis, who testified that he had upgraded the electrical service to prevent small appliances from accidentally tripping the breakers. Finally, Travis also testified that he was not aware of any pry marks on any of the doors before the rape, which provides at least some temporal limitation on when the pry marks were made. Under these facts, we must disagree that there is "nothing" to tie Jefferson to the pry marks. Beyond that, it was for the jury to weigh Crites's testimony regarding the pry marks.

Because we hold that the trial court did not err in admitting the testimony concerning the pry marks, Jefferson's contention that the error was not harmless is moot.

Affirmed.

GLADWIN and ROBBINS, JJ., agree.